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Paper No. 12

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JUL 23 2001

**OFFICE OF PETITIONS
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In re Application of :
Kelly R. Ahlgren et al. :
Application No. 09/583,654 :
Filed: May 30, 2000 :
Attorney Docket No. D-41939-10 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 29, 2001, to revive the above-identified application. The petition is more properly a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **Granted**.

This application was held abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment (37 CFR 1.121) (Notice) mailed March 19, 2001, which set a period for reply of one (1) month or Thirty (30) days, with extensions of time available pursuant to the provisions of 37 CFR 1.136(a). A Notice of Abandonment was mailed on May 8, 2001.

Petitioner stated in the instant petition that a reply in the form of an Amendment under 37 CFR 1.111, a one month extension of time, and a Terminal Disclaimer were filed on March 2, 2001, in response to the non-final Office action mailed October 3, 2000. The Office considered the Amendment to be non-compliant because it did not comply with 37 CFR 1.121(c)(1)(i). Therefore, the Office mailed a Notice of Non-Compliant Amendment (37 CFR 1.121) on March 19, 2001. However, as 37 CFR 1.136(a) provides that an applicant may extend the time period for reply up to five months after the time period set for reply and since the period set in the Notice of March 19, 2001 is an extendible period under 37 CFR 1.136(a), extensions of time up to and including September 19, 2001 were still available. Therefor, since this case was not in fact abandoned at the time of filing the instant petition, the Notice of Abandonment of May 3, 2001 was prematurely mailed and is hereby vacated.

In view of the above and as authorized, the appropriate two month extension of time fee of \$390 will be charged to Deposit Account No. 07-1765. Since a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee, the \$1,240 fee assessed to the instant petition is unnecessary and will be credited to the above-noted deposit account.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

The application file is being forwarded to Technology Center AU 1773.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy